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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/774,768	02/09/2004	Gregory Ashton	9490	9760
27752	7590	09/29/2006	EXAMINER	
THE PROCTER & GAMBLE COMPANY INTELLECTUAL PROPERTY DIVISION WINTON HILL BUSINESS CENTER - BOX 161 6110 CENTER HILL AVENUE CINCINNATI, OH 45224			HILL, LAURA C	
			ART UNIT	PAPER NUMBER
			3761	

DATE MAILED: 09/29/2006

Please find below and/or attached an Office communication concerning this application or proceeding.



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EXAMINER

ART UNIT      PAPER

20060925

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Commissioner for Patents

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/774,768	ASHTON ET AL
	Examiner Laura C. Hill	Art Unit 3761

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*  
**Period for Reply**

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### **Status**

1) Responsive to communication(s) filed on 19 July 2006.

2a) This action is FINAL.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### **Disposition of Claims**

4) Claim(s) 1-6 and 21-33 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-6, 21-33 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### **Application Papers**

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### **Priority under 35 U.S.C. § 119**

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All    b) Some \* c) None of:  
1. Certified copies of the priority documents have been received.  
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### **Attachment(s)**

1) Notice of References Cited (PTO-892)  
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_

5) Notice of Informal Patent Application  
6) Other: \_\_\_\_\_

## DETAILED ACTION

### ***Response to Arguments***

Applicant's arguments filed 19 July 2006 have been fully considered but they are not persuasive.

In response to Applicant's arguments that LaVon does not teach longitudinal welds as recited in claim 1 (see Remarks pages 4-6), Examiner maintains that LaVon does teach fasteners that were properly interpreted to be "welds" (see page 4, paragraph 1 of the Office action dated 1 May 2006). It is pointed out that Applicant has stated that an alternative embodiment of their invention 'has seams 32 may include a *releasable fastener*, such as but not limited to, hook and loop fasteners and adhesives' (see instant specification page 6, lines 22-25). Furthermore, LaVon discloses the flap can have other types of adhesives known in the art (paragraphs 0122-0123). Nowhere in the claims or instant specification does the Applicant require the "welds" to create a *permanent sealing* as suggested by Applicant and thus the mechanical fasteners of Lavon meet the claim limitation and perform a sealing function.

In response to Applicant's argument that it is unclear which elements the Office is construing to be the flaps and longitudinal welds (see Remarks pages 5-6), Examiner would like to reiterate that the flap is element 620 and the longitudinal welds 625 as discussed on page 4, paragraph 1 of the Office action dated 1 May 2006 and as seen further in figure 7 of LaVon.

In response to Applicant's argument that LaVon does not teach cuts in the stratum as recited in claim 24 (see Remarks page 6), Examiner maintains that LaVon

teaches the cuts/spaces formed between the stratum layers that form flap 620 (figures 8-9).

In response to Applicant's argument that LaVon does not teach the handle laterally spans the width of the sidewall as recited in claim 28 (see Remarks page 6), Examiner maintains that the handle 620 of LaVon spans the width of the sidewall since the flap extends longitudinally across the layers that form the longitudinal outer edges of the flap interpreted to be the sidewall (see also figure 7).

In response to Applicant's argument that Yoshikazu does not teach longitudinal welds (see Remarks page 7), Examiner maintains that Yoshikazu discloses elements 11 which are the longitudinal welds that seal the front and back waist portions of the absorbent article together (see figure 1) and also discloses the flap as a single ear/component (see figure 2).

In response to Applicant's argument that since LaVon does not teach a kit the Ngai case law cannot be used for teaching instructions (see Remarks pages 7-8), Examiner would like to point out that combining printed instructions and an old product into a kit will not render the claimed invention nonobvious even if the instructions detail a new use for the product). *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983). Since claims 21-22 and 31-33 requires the kit is formed by the article in addition to instructions for use and since LaVon discloses the product as discussed below with respect to claim 1, the limitations have been met.

***Specification***

The objection to the title has been removed and the title has been changed to:

Absorbent Article Comprising a Flap Handle that Aids in the Application of Said Absorbent Article.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 5-6, and 23-30 are rejected under 35 U.S.C. 102(b) as being anticipated by LaVon et al. (US 2002/0091368; herein 'LaVon'). Regarding claims 1-2 and 27 LaVon discloses a disposable absorbent article such as a diaper 20 (page 2, paragraph 0026) having belt zone 630 [belt zone is adjacent flap 620 in figure 7] comprising (a) a chassis having an absorbent core positioned between liquid pervious top sheet 22 and liquid impervious back sheet 24 (page 3, paragraph 0036, page 4, paragraph 0041, lines 2-4 and page 5, paragraph 0046, lines 1-2); (b) at least one sidewall disposed adjacent the chassis that connects front region 32 to back region 34 and thus forming leg openings and a waist edge (page 3, paragraph 0037, lines 1-5 and figure 1); said sidewall comprising an ear or panel (figures 1 and 3), and (c) wherein at least one handle is a flap 620 comprising a stratum/layered panel members (page 13, paragraph 0115, lines 14-21 and figure 8), wherein the flap forms a gap between the stratum and the chassis (figure 7), wherein the flap 620 is joined to the garment-facing

Art Unit: 3761

surface of the article 600 by opposing longitudinal welds/fasteners 625 (page 13, paragraph 0115, lines 20-21) and is disposed proximate opposing distal longitudinal edges of the flap (figure 7), wherein the handle is disposed adjacent the sidewall (figures 7-8) and wherein the absorbent diaper is a pull-on garment such as training pants (page 1, paragraph 0010, lines 1-5).

Regarding claim 3 LaVon discloses back sheet 24 is a non-woven material, thermoplastic film (page 5, paragraph 0046, lines 9-13).

Regarding claims 5-6 and 25-26 LaVon discloses the flap stratum is a portion of the belt zone that has been folded away from the wearer-facing surface of the article at hingepoints [hingepoint is disposed at a location where perimeter 710 meets adhesive/lateral weld 720] (page 14, paragraph 0123, lines 6-8 and figure 10) and wherein the flap comprises a multiple construction wherein the stratum is discrete (figure 10).

Regarding claims 23 and 28 LaVon discloses flap 620 has a lateral width greater than a longitudinal length and the handle laterally spans the width of the sidewall (figure 7).

Regarding claim 24 LaVon discloses blocking layers 670 forms cut through a portion of the stratum (figure 9 and page 13, paragraph 0117).

Regarding claims 29-30 LaVon discloses more than one ear connected to each other by welding means such as tab fasteners 640 (figure 8).

Claims 1, 6, 27, and 29-30 are rejected under 35 U.S.C. 102(b) as being anticipated by Yoshikazu (JP 11104180A2; herein 'Yoshikazu'). Yoshikazu discloses an

absorbent pants-type/pull-on diaper comprising a chassis, a sidewall disposed adjacent the chassis to form leg openings and a waist edge and at least one handle/flap comprising a stratum 15, wherein the flap 3a forms a finger-gripping gap between the discrete stratum 15 and the chassis, wherein the flap is joined to the garment-facing surface by adhesive welding means and wherein the handle is disposed adjacent to the sidewall, said sidewall comprises multiple ears 11 (see figures and entire abstract).

***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 21-22 and 31-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over LaVon et al. (US 2002/0091368; herein 'LaVon'). Lavon does not expressly disclose instructions. Since the instructions (printed matter) are not functionally related to the structure of the kit, the claimed invention does not patentably distinguish from the prior art reference(s). In order for the instructions (printed matter) to impart patentability to the kit, there must be a new and non-obvious functional relationship between the printed matter and some element of the kit. Where the only difference between a prior art product and a claimed product is printed matter that is not functionally related to the product, the content of the printed matter will not distinguish the claimed product from the prior art. *In re Ngai*, 367 F.3d 1336, 1339, 70 USPQ2d 1862, 1864 (Fed. Cir. 2004). See also MPEP 2121.01 (III).

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura C. Hill whose telephone number is 571-272-7137. The examiner can normally be reached on Monday through Friday (hours vary).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3761

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Laura C. Hill  
Examiner  
Art Unit 3761

LCH



TATYANA ZALUKAEVA  
SUPERVISORY PRIMARY EXAMINER

